

E-FILED - 8/2/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAUL UVALLES,)	No. C 09-5221 RMW (PR)
)	
Plaintiff,)	ORDER DIRECTING
)	PLAINTIFF TO LOCATE
v.)	UNSERVED DEFENDANTS
)	
FRANCISCO JACQUEZ, Warden, et al.,)	
)	
Defendants.)	

On November 4, 2009, plaintiff filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. On April 23, 2010, plaintiff filed an amended complaint. On May 5, 2010, the court ordered service of the stated cognizable claims in plaintiff's amended complaint upon named defendants. On January 4, 2010, the court received ten summons which were returned unexecuted. Specifically, defendants RN C. Duncan and RN P. Crinklaw were not served because the facility needed more information. Also, Correctional Officer D. DeWitt, Correctional Officer F. Palaccio, Correctional Officer Stout (ISU), Sergeant Henderson, Correctional Officer J. Gonzalez, Correctional Officer J. Shaw, Correctional Officer B. Carter, and Correctional Officer J. Johnson were not served because more than one employee had similar names. Accordingly, these ten defendants have not been served.

Here, plaintiff's complaint has been pending for over 120 days, and thus, absent a showing of "good cause," is subject to dismissal without prejudice as to the unserved defendants.

1 See Fed. R. Civ. P. 4(m). In cases wherein the plaintiff proceeds in forma pauperis, the “officers
 2 of the court shall issue and serve all process.” 28 U.S.C. 1915(d). The court must appoint the
 3 Marshal to effect service, see Fed. R. Civ. P. 4(c)(2), and the Marshal, upon order of the court,
 4 must serve the summons and the complaint, see Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir.
 5 1994), overruled on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). Although a
 6 plaintiff who is incarcerated and proceeding in forma pauperis may rely on service by the
 7 Marshal, such plaintiff “may not remain silent and do nothing to effectuate such service;” rather,
 8 “[a]t a minimum, a plaintiff should request service upon the appropriate defendant and attempt to
 9 remedy any apparent defects of which [he] has knowledge.” Rochon v. Dawson, 828 F.2d 1107,
 10 1110 (5th Cir. 1987). If the marshal is unable to effectuate service through no fault of his own,
 11 for example, because plaintiff failed to provide sufficient information or because the defendant is
 12 not where plaintiff claims, and plaintiff is informed, plaintiff must seek to remedy the situation
 13 or face dismissal. See Walker, 14 F.3d at 1421-22.

14 Because plaintiff has not provided sufficient information to allow the Marshal to locate
 15 and serve the above named defendants, plaintiff must remedy the situation or face dismissal of
 16 his claims against said defendants without prejudice. See Walker, 14 F.3d at 1421-22. Such
 17 additional information may include a first name or first initial, the defendant’s current assigned
 18 unit or assigned unit at the time of the allegations, or other more identifying information so that
 19 the Marshal can locate and determine the particular defendant to be served.

20 Accordingly, plaintiff must provide the court with accurate and current information for
 21 defendants RN C. Duncan, RN P. Crinklaw, Correctional Officer D. DeWitt, Correctional
 22 Officer F. Palaccio, Correctional Officer Stout (ISU), Sergeant Henderson, Correctional Officer
 23 J. Gonzalez, Correctional Officer J. Shaw, Correctional Officer B. Carter, and Correctional
 24 Officer J. Johnson such that the Marshal is able to effect service upon them. If plaintiff fails to
 25 provide the court with the accurate and current information so that the Marshal can effect
 26 service, within **thirty (30) days** of the date this order is filed, plaintiff’s claim against the above
 27 named defendants will be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil
 28 Procedure; the dismissal will be without prejudice to plaintiff refiling his complaint with such

1 information.

2 IT IS SO ORDERED.

3 DATED: 7/30/10


RONALD M. WHYTE
United States District Judge